UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JULIO ARTURO BERDUO LOPEZ,

Petitioner,

v.

WARDEN of Stewart Detention Center; KRISTIN SULLIVAN, Acting Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO") Field Office, Atlanta; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security; and TODD BLANCHE, Acting Attorney General of the United States, in their official capacities,

Respondents.

Case No. 4:26-cv-995

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Julio Arturo Berduo Lopez, a citizen of Guatemala, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge the legality of his detention by Immigration and Customs Enforcement ("ICE"), a component of the U.S. Department of Homeland Security ("DHS"). He

is currently detained at the Stewart Detention Center in Georgia, and has been detained in ICE custody since on or about May 2, 2026.

2. Petitioner faces continued unlawful detention because an Immigration Judge ("IJ") has now denied him a bond hearing based on lack of jurisdiction—despite the Eleventh Circuit's issuance of *Hernandez Alvarez v. Warden*, 175 F.4th 1258, 1276, 1280–81, 1285 (11th Cir. 2026), where the Court concluded that Immigration and Nationality Act ("INA") § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) applies to those "'seeking admission' at the border," while INA § 236, 8 U.S.C. § 1226 "supplies the default rule of detention for an alien arrested and detained in the interior."

3. In Respondents' view, Petitioner's encounter with border authorities after his 2019 entry into the United States makes him categorically ineligible for bond, a conclusion flatly at odds with the binding law in this Circuit.

4. Petitioner seeks an order from this Court requiring immediate release, or in the alternative a bond hearing with extra safeguards, because ordering a bond hearing alone will not reliably remedy Petitioner's unlawful detention. Experience in recent cases demonstrates that, absent clear guidance or safeguards, bond

determinations may fail to meaningfully engage with individualized assessments of flight risk or danger.[1]

5. To the extent this Court orders a bond hearing rather than release, Petitioner seeks that this Court's order include the following safeguards:

> (1) Make explicit that Respondents bear the burden to show flight risk or danger to society. *See, e.g., J.G. v. Warden, Irwin Cty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020) (finding that the Government "must bear the burden of proof to justify a noncitizen's detention pending removal proceedings"); *Lopez v. Paulk*, --- F. Supp. 3d ---, No. 7:26-cv-00029, 2026 WL 961948, at *5–*10 (M.D. Ga. Apr. 6, 2026) (requiring the Government to "bear the burden of establishing by clear and convincing evidence that Petitioner is either a danger to the community or a flight risk" at a § 1226(a) bond hearing); and
>
> (2) Order Respondents to give a status report to this Court within three (3) days of any ordered bond hearing, stating whether Petitioner has been granted bond, and, if his request for bond was denied, the reasons for that denial, to certify compliance with this Opinion.

JURISDICTION AND VENUE

6. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

[1] Counsel is aware, based on recent litigation experience and communications with other immigration practitioners, that many similarly situated noncitizens have faced bond denials following habeas relief on grounds that do not meaningfully address individualized risk, showing that an order requiring a bond hearing without also ordering safeguards does not reliably remedy unlawful detention. (See, e.g., Ex. 1, *Romero-Nolasco v. McDonald*, No. 25-cv-12492-MJJ, ECF No. 22 at 5 n.2 (D. Mass. Jan. 14, 2025) ("[I]t is clear that the IJ simply did not apply the factors relevant to assessing whether a person is a flight risk to the evidence.").)

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

9. "A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, . . . be brought in any judicial district in which a defendant in the action resides[.]" *See* 28 U.S.C. § 1391(e).

10. The Supreme Court articulated in *Rumsfeld v. Padilla* the standard for determining if a court has jurisdiction to consider a habeas corpus petition, which breaks down into two subquestions—(1) who is the proper respondent to the petition, and (2) does the Court have jurisdiction over that respondent. 542 U.S. 426, 434 (2004).

11. Under *Padilla*, the "immediate custodian" of the detained petitioner is the proper respondent in such habeas actions, which is typically the warden of the facility in which the petitioner is being housed. *See id.* at 443 ("The plain language of the habeas statute thus confirms the general rule that for core habeas petitions

challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.").

12. Here, under *Padilla*, the immediate custodian of the Petitioner, and thus the proper Respondent, is the Warden of the Stewart Detention Center in Lumpkin, Georgia. *See id.* Because this Court has jurisdiction over actions arising in Stewart, Georgia, the venue is proper in this case.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. Petitioner has exhausted his administrative remedies to the extent required by law. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. However, "that does not mean that courts may disregard a failure to exhaust and grant relief on the merits if the respondent properly asserts the defense." *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015). "To properly exhaust administrative remedies, a petitioner must comply with an agency's deadlines and procedural rules." *Straughter v. Warden, FCC Coleman-Low*, 699 F. Supp. 3d 1304, 1306 (M.D. Fla. 2023) (citing *Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006) (discussing the Prison Litigation Reform Act's ("PLRA") exhaustion requirement)). It is the Respondent's burden to prove that the Petitioner has "failed to exhaust all available administrative remedies." *Id.* at 1307.

14. However, in detention cases such as the Petitioner's, appeals to the Board of Immigration Appeals ("BIA") take several months or years. Thus, here,

requiring the Petitioner to appeal his bond denial to the BIA to prudentially exhaust is not efficient, would cause irreparable harm by continuing to deprive him of his liberty, and would be futile so long as Respondents continue to deny bond hearings despite binding precedent. *See McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (noting that traditional exceptions include where exhaustion would cause "undue prejudice to subsequent assertion of a court action" or "irreparable harm" to the petitioner, where there is "some doubt as to whether the agency was empowered to grant effective relief," or where it would be futile because "the administrative body is shown to be biased or has otherwise predetermined the issue before it" (internal quotation marks omitted)), *superseded by statute on other grounds as recognized in Booth v. Churner*, 532 U.S. 731 (2001).

15. Additionally, the Board of Immigration Appeals ("BIA") is the improper venue to adjudicate constitutional issues, as it lacks the authority to rule that Respondents' actions violate the Constitution. Instead, constitutional claims are a matter for federal courts.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good

cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

17. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

18. Petitioner is a noncitizen who is currently detained at the Stewart Detention Center. He is in the custody, and under the direct control, of Respondents and their agents.

19. Respondent Warden of the Stewart Detention Center is sued in their official capacity. Respondent Warden is the immediate custodian of the Petitioner.

20. Respondent Kristin Sullivan is sued in her official capacity as the Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Atlanta Field Office. Respondent Sullivan is a legal custodian of Petitioner and has authority to release him.

21. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the DHS. In this capacity, Respondent Mullin is responsible for the implementation and enforcement of the Immigration and Nationality Act, and

oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Mullin is a legal custodian of Petitioner.

22. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Blanche is a legal custodian of Petitioner.

STATEMENT OF FACTS

23. Petitioner, a citizen and national of Guatemala, entered the United States without inspection with his son on or about April 23, 2019, at or near Eagle Pass, Texas. (*See* Ex. 2, Form I-213 at 1–3.) He encountered border patrol the same day. (*See id.* at 1.) Petitioner was released on his own recognizance the following day, on April 24, 2019. (Ex. 3, Notice of Custody Determination.)

24. The same day, Respondents also issued Petitioner a Notice to Appear. (*See* Ex. 4, Notice to Appear ("NTA").) The NTA charged Petitioner as removable under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), stating the following: "[Y]ou are an alien present in the United States without being admitted or paroled,

or who arrived in the United States at any time or place other than as designated by the Attorney General." (*See id.*)

25. Petitioner applied for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") in March 2020. (Ex. 5, I-589 Application at 12, 16.) An IJ ultimately denied his application and ordered him removed in November 2025. (*See* Ex. 6, DHS Notice of Filing at 6–9.) Petitioner has since appealed, (*see* Ex. 7, BIA Filing Receipt for Appeal), and his appeal remains pending.

26. On April 30, 2026, a Georgia police officer performed a traffic stop on Petitioner and he was charged with driving under the influence. (*See* Ex. 6, DHS Notice of Filing at 46.) ICE subsequently took Petitioner into custody on or about May 2, 2026.

27. Other than traffic violations and the traffic stop leading to his detainment, Petitioner has no other criminal history. (*Id.* at 45–46.) He has lived and worked in the United States without incident since his release on recognizance.

28. While detained, Petitioner sought bond pursuant to INA § 236(a), 8 U.S.C. § 1226(a). (Ex. 8, Motion for Bond Hearing at 1.) He stated that he was making the request pursuant to the Eleventh Circuit's decision in *Hernandez Alvarez*. (*Id.*)

29. On June 29, 2026, an IJ denied bond for lack of jurisdiction. (Ex. 9, Bond Order at 1.) The IJ stated that she lacked jurisdiction pursuant to *Matter of Q. Li* because "[t]he evidence shows that Respondent was encountered by Border Patrol after entering the United States and was released and issued a Notice to Appear. Thus, the Court denies bond for lack of jurisdiction." (*Id.*)

30. Petitioner has remained illegally detained without bond at the Stewart Detention Center ever since.

LEGAL FRAMEWORK

31. Section 2241(c)(3) authorizes federal courts to grant habeas relief to prisoners or detainees who are "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Federal courts retain jurisdiction under section 2241 to review purely legal statutory and constitutional claims regarding the government's detention authority, but jurisdiction does not extend to "discretionary judgment," "action," or "decision" by the Attorney General with respect to either detention or removal. *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (citing, *inter alia*, *Demore v. Kim*, 538 U.S. 510, 516–17 (2003)).

32. Despite the Eleventh Circuit's decision in *Hernandez Alvarez*, Petitioner, who is the subject of a pending removal hearing, is currently detained at

the Stewart Detention Center in Georgia and has been denied a bond hearing based on lack of jurisdiction under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

33. Accordingly, Petitioner asserts that (1) the Respondents' actions violated the INA when they detained him under 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. § 1226(a), in violation of binding Eleventh Circuit precedent; (2) his Fifth Amendment right to due process of law was violated when the Respondents subjected him to mandatory detention with no individualized hearing despite his living in the interior of the country for approximately seven years; and (3) the Respondents' actions violated the Administrative Procedure Act ("APA") when they detained him under 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. § 1226(a).

A. INA

34. The Petitioner is not properly detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), as Respondents assert, but under INA § 236(a), 8 U.S.C. § 1226(a). Pursuant to 8 U.S.C. § 1225(b)(2)(A):

> in the case of an alien who is an *applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, The alien shall be detained for a proceeding under section 1229a of this title [i.e., removal proceedings].

(emphasis added).

35. Petitioner maintains that he is detained under 8 U.S.C. § 1226(a), which provides that:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) [mandating the detention of certain criminal aliens] and pending such decision, the Attorney General—
>
> (1) may continue to detain the arrested alien; and
>
> (2) may release the alien on—
>
> (A) bond of at least $1,500 with security approved by, and containing conditions described by, the Attorney General; or
>
> (B) conditional parole; but
>
> (3) may not provide the alien with work authorization . . . unless the alien is lawfully admitted for permanent residence or otherwise would . . . be provided such authorization.

36. Under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), an applicant for admission seeking admission shall be detained for a removal proceeding. It is now the position of the EOIR, which houses both the BIA and immigration judges, that INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), applies to *all* individuals who arrived in the United States without documents, regardless of how long they have lived in the United States and regardless of how far they were apprehended from the border.

37. In May 2025, the BIA decided *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). The BIA held that a noncitizen who entered the United States without inspection and was arrested without a warrant while "arriving" is an "applicant for

admission" under section 1225(b) and is therefore subject to mandatory detention and ineligible for a bond hearing under INA § 236(a), 8 U.S.C. § 1226(a). *Id.* at 67–68, 70–71. The case involved a Chinese national who crossed the southern border without inspection in 2022 and was arrested by a DHS officer "approximately 5.4 miles away from a designated port of entry and 100 yards north of the border." *Id.* at 67. The noncitizen was released on parole under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). *Id.* at 67. After her parole was terminated in 2024, she was detained again and issued an NTA. *Id.* She sought a bond hearing but an IJ denied her request. *Id.*

38. On appeal, the noncitizen asserted that she was being detained pursuant to section 1226(a), not section 1225(b)(2)(A), and was therefore eligible for release on bond. *Id.* The BIA reasoned that she was an applicant for admission because she tried to enter the country illegally, and a noncitizen "who is detained shortly after unlawful entry . . . is in the same position as an alien seeking admission at a port of entry." *Id.* at 67–68 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). "Thus, the respondent is a[] [noncitizen] 'who arrives in the United States' under section [1225(a)(1)]." *Id.* at 68. The BIA concluded that "for [noncitizens] arriving in and seeking admission in the United States who are placed directly in full removal proceedings," section 1225(b)(2)(A) "mandates detention

'until removal proceedings have concluded.'" *Id.* (quoting *Jennings*, 583 U.S. at 299).

39. The BIA therefore affirmed the denial, holding that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section [1225(b)], and is ineligible for any subsequent release on bond under section [1226(a)]." *Id.* at 69. Thus, the BIA concluded that immigration judges lack authority in such cases to grant bond under section 1226(a). *Id.* at 71.

40. On July 8, 2025, ICE issued an internal memo, the July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission" (hereinafter "ICE Memo") that expanded the logic of *Q. Li*. (*See* Ex. 10, ICE Memo "Interim Guidance Regarding Detention Authority for Applicants for Admission" dated July 8, 2025 [hereinafter "ICE Memo"].) The ICE Memo directed officers to treat virtually all noncitizens in the United States who have not been formally admitted, including those present for years, as "applicants for admission" subject to mandatory detention under section 1225(b), and thus to refrain from issuing custody-determination forms under section 1226(a). (*See id.*)

41. The ICE Memo expanded the reasoning in *Q. Li* beyond individuals who were arrested immediately after entry and applied it broadly, including to

people detained long after arrival, by classifying them as "applicants for admission" simply because they had not been formally admitted or paroled. *See id.*

42. The ICE Memo states as follows:

> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236[, 8 U.S.C. § 1226,] and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.
>
> *Id.*

43. In September 2025, the BIA again expanded this interpretation in *Matter of Yajure Hurtado* to cover all individuals who entered without inspection and admission at any point in the past, even if they had been present in the United States for years. 29 I&N Dec. 216 (BIA 2025).

44. The U.S. District Court for the Central District of California in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873, ECF No. 93 (C.D. Cal. Dec. 18, 2025), recently declared that the ICE memo violated the APA and vacated *Matter of Hurtado*. However, the Ninth Circuit stayed the district court's order pending a ruling on the government's appeal. (*See* Ex. 11, *Maldonado Bautista*, No. 26-1044 (order granting stay pending appeal).) Thus, although that judgment will remain fully in effect in the Central District of California, *Matter of Hurtado* is

otherwise still in effect and being relied on widely by immigration judges nationwide.

45. The majority of federal courts to consider this issue have rejected the Government's new position. *See, e.g.*, *See Lopez-Campos v. Raycraft*, 175 F.4th 713, 732–35 (6th Cir. 2026) (finding that 8 U.S.C. § 1226(a) governs the detention of noncitizens already present in the country and detention without bond under § 1226(a) constituted a due process violation); *Hernandez Alvarez*, 175 F.4th at 1266–85 (Eleventh Circuit concluding that § 1226(a) governs the detention of noncitizens already present in the country); *Barbosa da Cunha v. Freden*, 175 F.4th 61, 96 (2d Cir. 2026) (concluding that the detention of a noncitizen who had entered unlawfully in 2004 or 2005 was governed by § 1226(a), not 8 U.S.C. § 1225(b)(2)(A)); *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 494 n.22, Appendix A (S.D.N.Y. 2025) (collecting cases, noting that, at that time, "350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States" had rejected the Government's "new position that *all* noncitizens who came into the United States illegally, but since have been living in the United States, *must be detained* until their removal proceedings are completed" (emphasis in original)); *but see Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502–08 (5th Cir. 2026) (determining that all noncitizens present in the United States without being admitted are subject to mandatory

detention under § 1225(b)(2)(A) rather than discretionary detention under § 1226(a)); *Avila v. Bondi*, 170 F.4th 1128, 1132–38 (8th Cir. 2026) (same).

46. In *Hernandez Alvarez*, the Eleventh Circuit affirmed district court orders granting habeas petitions after determining that the noncitizens' detentions were governed by section 1226(a), not section 1225(b)(2)(A), and they were eligible for bond. 175 F.4th at 1261–62, 1285. The Court explained that section 1225(b)(2)(A) applies only where a noncitizen is an (1) "applicant for admission" and (2) "seeking admission." *Id.* at 1267. As to the first requirement, a noncitizen is "deem[ed]" to be an applicant "merely by arriving or being present in the United States without having been admitted." *Id.* With regard to the second requirement, the Court held that "seeking admission" is not statutorily defined and must therefore be given its ordinary meaning: an affirmative, ongoing pursuit of lawful entry through inspection, consistent with the INA's definition of "admission" as lawful entry after inspection and authorization by an immigration officer. *Id.* at 1267–68. The Court emphasized that "seeking" is written as a present participle, underscoring that it is describing some active and temporally ongoing step or process on the part of the noncitizen. *Id.* at 1268. It criticized the Government's argument that mere presence in the interior transforms a noncitizen into an applicant "seeking admission" as conflating the passive condition of presence with actively seeking something. *Id.* at 1269.

47. Reading the requirements together, the Court concluded that a noncitizen falls within the scope of section 1225(b)(2)(A) when both requirements are met concurrently, and the noncitizen "(3) is not clearly and beyond a doubt entitled to lawful entry, as determined by the examining immigration officer." *See id.* Applying this framework, the Eleventh Circuit held that the noncitizens in the case, who had been detained following a traffic stop, "were not applying for entry in any literal sense," nor "taking any cognizable step to obtain the rights and privileges of lawful entry. They were only present in the country. They were not seeking or pursuing any object, let alone 'lawful entry.'" *Id.*

48. The Court noted that there were "many shades of grey" between being unlawfully present and admitted, including being granted temporary protected status, being granted asylum, or obtaining a visa for being a cooperating criminal witness, victim of human trafficking, or victim of domestic abuse. *Id.* at 1269–70. Furthermore, it rejected the Government's "binary" reading as oversimplifying the "broad and multifaceted nature of the INA." *Id.* at 1270. The Court also reasoned that section 1225 was designed to govern arriving aliens, laying out the procedures and authority for officers to inspect arriving vessels and people, while section 1226 supplies a different rule of detention that applies to noncitizens DHS seeks to remove from the interior. *Id.* at 1278; *see also id.* at 1278–79 (noting that the Supreme Court in *Jennings* observed that section 1226 generally governs the

process of arresting and detaining aliens present in the country, including those "who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission" (quoting *Jennings*, 583 U.S. at 288–89)).

49. The Court also rejected the Government's argument that, even if it had misread the statute, the petitioners were "seeking admission" because they did not voluntarily self-deport after the initiation of removal proceedings. *Id.* at 1284–85. It observed that seeking relief from removal is not the same thing as seeking admission, and a removal proceeding before an immigration judge does not constitute an examination by an "immigration officer." *Id.* at 1285.

50. The issue presented in this action is also nearly identical to that this Court has recently decided, finding that the petitioner's detention was governed by 8 U.S.C. § 1226(a). As this Court noted in the recent case *J.A.M. v. Streeval*, "under no reasonable interpretation is 'alien seeking admission' synonymous with 'any alien present in the United States who has not been admitted.'" *See J.A.M. v. Streeval*, No. 4:25-cv-342, 2025 WL 3050094, at *5 (M.D. Ga. Nov. 1, 2025); *see also P.R.S. v. Streeval*, No. 4:25-cv-330, 2025 WL 3269947, at *1 (M.D. Ga. Nov. 24, 2025) ("The Court has previously rejected Respondents' broad interpretation of § 1225(b)(2) that detention is mandatory for any alien who has not been lawfully admitted.").

B. Due Process

51. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding his detention. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

52. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c).

53. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111–13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

54. To guarantee against arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement

"outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

55. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 522, 528.

56. The government may not detain a noncitizen based on any other justification.

57. To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020) (holding that the Government "must bear the burden of proof to justify a noncitizen's detention pending removal proceedings"); *Lopez v. Paulk*, --- F. Supp. 3d ---, No. 7:26-cv-00029, 2026 WL 961948, at *5–*10 (M.D. Ga. Apr. 6, 2026) (requiring the Government to "bear the burden of establishing by clear and convincing evidence that Petitioner is either a danger to the community or a flight risk" at a § 1226(a) bond hearing).

58. In *Jennings*, 583 U.S. 281, "the Supreme Court held that [section] 1226(a) does not mandate that a clear and convincing evidence burden be placed on the government in bond hearings, [but] it left open the question of whether the Due Process Clause does." *Darko v. Sessions*, 342 F. Supp. 3d 429, 434–35

(S.D.N.Y. 2018). In considering the question left open by *Jennings*, both the First and Second Circuits, along with several district courts (in addition to this Court), have found that due process requires that the government bear the burden of justifying a noncitizen's section 1226(a) detention. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021) (concluding "that the government must bear the burden of proving dangerousness or flight risk in order to continue detaining a noncitizen under section 1226(a)"); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020) (holding that the government must bear the burden of proving danger and flight risk by clear and convincing evidence if an individual faces prolonged detention); *see, e.g.*, *Lopez*, 2026 WL 961948, at *5–*10; *Molina Ochoa v. Noem*, No. 1:25-cv-00881, 2025 WL 3125846, at *13 (D.N.M. Nov. 7, 2025) (holding that the government must "bear the burden at a § 1226(a) bond hearing of proving by clear and convincing evidence that Petitioner is a flight risk or a danger to the community"); *Ochoa Ochoa v. Noem*, No. 1:25-cv-10865, 2025 WL 2938779, at *8 (N.D. Ill. Oct. 16, 2025) (same).

59. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

60. First, as stated above, a person's freedom from imprisonment "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S.

at 690. "[C]ommitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (quotation omitted). "Case after case instructs us that in this country liberty is the norm and detention 'is the carefully limited exception.'" *Velasco Lopez*, 978 F.3d at 851 (quotation omitted). Although section 1226(a) detention will eventually conclude when removal proceedings end, "[t]he exact length of detention under section 1226(a) is impossible to predict and can be quite lengthy." *Hernandez-Lara*, 10 F.4th at 29–30 (discussing the length of § 1226(a) detentions).

61. Second, the risk of erroneous deprivation of that liberty interest is high, given the imbalance of resources between a detainee and the Government. *See, e.g.*, *Velasco Lopez*, 978 F.3d at 854 (noting that "the Government had substantial resources to deploy" and "to the extent the Government did not have the necessary information at its fingertips, it had broad regulatory authority to obtain it"). Detention in prison-like conditions restricts noncitizen's ability to communicate with attorneys, family members, and other individuals who may present testimony or have access to the noncitizen's records, and these limited resources and investigative tools increase the likelihood that the factual record developed at the bond hearing will be incomplete. *See J.G.*, 501 F. Supp. 3d at 1337. This, in turn, creates considerable risk of error in the IJ's findings and impairs the BIA's ability to correct erroneous deprivations. *See id.* Proving a

negative as to danger and risk of flight can also be more difficult than proving a cause for concern. *See Hernandez-Lara*, 10 F.4th at 31. Additionally, noncitizens subject to immigration detention often lack full proficiency in English, have no right to counsel, and very often cannot obtain counsel on their own, particularly if they are detained. *Id.* at 30. With regard to bond redetermination hearings, while noncitizens may seek a bond redetermination hearing, they must also demonstrate materially changed circumstances and will encounter the same lack of resources to prove their case, and an appeal to the BIA "may entail additional months of detention. . . . In sum, even though detention determinations are subject to multiple levels of review, the availability of review does little to change the risk of error inherent in the current bond procedure where the burden is always on the non-citizen." *Lopez*, 2026 WL 961948, at *8; s*ee also Hernandez-Lara*, 10 F.4th at 32 ("[B]ecause the burden is always on the noncitizen, the availability of review does little to change the risk of error inherent in the current burden allocation. Loaded dice rolled three times are still loaded dice.").

62. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention. Moreover, the Government does not have an interest in the prolonged detention of noncitizens who are neither dangerous nor a risk of flight. *See*

Hernandez-Lara, 10 F.4th at 32–33 (also noting that detention incident to removal must bear a reasonable relation to its purpose, and that 86% of family detainees attended all their court hearings after release from detention, while 96% of asylum seekers attended all their hearings). Nor is the public interest served by unnecessary detention. *See Velasco Lopez*, 978 F.3d at 855. To the contrary, "[w]hen the Government incarcerates individuals it cannot show to be a poor bail risk for prolonged periods of time, as in this case, it separates families and removes from the community breadwinners, caregivers, parents, siblings and employees." *Id.* "Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33 (noting that states' "revenues drop because of reduced economic contributions and tax payments by detained immigrants, and their expenses rise because of increased social welfare payments in response to the harms caused by unnecessary detention").

63. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-cv-6527, 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

64. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program ("ISAP")—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether further incarceration is warranted. "By failing to require such consideration, the government has created a system of immigration bond determinations that does not adequately provide a reasonable connection between detention and legitimate governmental interests." *Id.* at 994 (citing, in relevant part, *Zadvydas*, 533 U.S. at 690).

65. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: "the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." *Jennings*, 583

U.S. at 329 (Breyer, J., dissenting); *accord Chavez-Alvarez v. U.S. Att'y Gen.*, 783 F.3d 478 (3d Cir. 2015); *Ngo v. INS*, 192 F.3d 390, 397–98 (3d Cir. 1999); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). "And in some cases[,] the conditions of their confinement are inappropriately poor." *Jennings*, 583 U.S. at 329 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, *e.g.*, indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

66. These conditions and obstacles only further underscore the serious due process concerns that immigration detention poses for noncitizens like the Petitioner and reflect the need for a decision before a neutral decisionmaker regarding further detention.

C. APA

67. Under the APA, a court shall "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," as well as "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C).

CLAIMS FOR RELIEF

COUNT ONE

Petitioner is Detained Under INA § 236, 8 U.S.C. § 1226, Not INA § 235, 8 U.S.C. § 1225

Statutory Violation

68. The allegations in the above paragraphs are realleged and incorporated herein.

69. Here, Petitioner was clearly not "seeking admission" for purposes of section 1225(b)(2)(A) when he was detained. *See* INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Like the petitioners in *Hernandez Alvarez*, Petitioner was not "applying for entry in any literal sense" nor "taking any cognizable step to obtain the rights and privileges of lawful entry." *See* 175 F.4th at 1269. Petitioner's encounter with Border Patrol occurred in 2019—approximately seven years before the detention at issue here. (*See* Ex. 2, Form I-213 at 2.) He was not detained while crossing the border or in the course of any attempt to gain entry, but following a traffic stop in Georgia. (*See* Ex. 6, Notice of Filing at 46.) Under the Eleventh Circuit's construction of section 1225(b)(2)(A), that is dispositive: a noncitizen falls within the provision only when both requirements are met concurrently. *See Hernandez Alvarez*, 175 F.4th at 1269.

70. The IJ's reliance on *Matter of Q. Li* to escape this conclusion is erroneous. The IJ and the BIA are bound by the precedent of the Circuit in which

they sit, and *Matter of Q. Li*'s reasoning—decided before *Hernandez Alvarez*—reflects the same conflation of presence with "seeking admission" that the Eleventh Circuit has since rejected. *Compare Matter of Q. Li*, 29 I&N Dec. at 67–69, *with Hernandez Alvarez*, 175 F.4th at 1269. Seeking admission is not the same as seeking relief from removal, *see Hernandez Alvarez*, 175 F.4th at 1285, and a single encounter with Border Patrol at the border does not fix a noncitizen's status as permanently "seeking admission." Seeking admission describes an active, ongoing pursuit of lawful entry through inspection and authorization—it is not a status acquired once and carried forever. *See id.* at 1267–69.

71. Accordingly, the IJ's refusal to exercise bond jurisdiction contradicts sections 1225(b)(2)(A) and 1226(a). By treating Petitioner as subject to section 1225(b) detention without statutory authorization, Respondents acted *ultra vires* and contrary to law. Noncitizens processed under section 1226 retain a statutory right to a bond hearing, and Petitioner was therefore entitled to a constitutionally sufficient and individualized bond hearing "at the outset of detention" as established by existing federal regulations. *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.l(d)(l), 1236.l(d)(l)).

72. Petitioner is thus entitled to immediate release, or in the alternative, a constitutionally sufficient bond hearing where the Government must prove, by clear and convincing evidence, that continued detention is warranted.

COUNT TWO

Respondents Violated Petitioner's Fifth Amendment Right to Due Process

Procedural Due Process

73. The allegations in the above paragraphs are realleged and incorporated herein.

74. The Due Process Clause of the Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

75. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

76. Where detention has been found unlawful, habeas relief must be effective, not merely formal. A bare order for a bond hearing does not necessarily cure a constitutional violation where the adjudicator retains unbounded authority to deny release without meaningful engagement with individualized flight risk or danger.

77. In such circumstances, District Courts have the authority to order release or in the alternative, a bond hearing with appropriate safeguards in place.

(*See, e.g.*, Ex. 12, *Soto-Medina v. Lynch*, No. 1:25-cv-1704, 2026 WL 161002, at *11 (W.D. Mich. Jan. 21, 2026) (ordering respondents "to provide Petitioner with an individualized bond hearing before an immigration judge, at which time the government will have the burden to demonstrate dangerousness or flight risk by clear and convincing evidence, or, in the alternative, immediately release Petitioner from custody" as well as "to file a status report within six business days of the date of this Court's Opinion and Judgment to certify compliance with this Opinion and the corresponding Judgment.").)

78. Here, Petitioner is entitled to due process protections under the Fifth Amendment of the U.S. Constitution. Respondents' refusal to provide Petitioner with an individualized bond hearing—and the IJ's reliance on *Matter of Q. Li* to conclude that no jurisdiction exists—violated Petitioner's rights under the Due Process Clause.

79. Under the three-part test of *Mathews*, 424 U.S. 319, the balance overwhelmingly favors Petitioner. His interest in liberty and family unity is paramount; the Government's blanket detention policy under *Matter of Q. Li* and *Matter of Hurtado* creates an extreme risk of erroneous deprivation by denying him any opportunity to demonstrate eligibility for release; and the Government's interest in ensuring appearance can be served by far less restrictive means.

80. The Respondents have shown neither that the continued detention of petitioner following his initial detention is reasonably related to the original purpose nor that the *Mathews* tests are satisfied. And importantly, no procedural safeguards were provided to the Petitioner as the IJ found he had no right to a bond hearing under *Matter of Q. Li.*

81. Petitioner has been a resident of the United States for approximately seven years before being arrested in the interior and was not seeking admission when he was detained, yet DHS asserts mandatory detention under INA § 235, 8 U.S.C. § 1225. *See Matter of Hurtado*, 29 I&N Dec. at 220 (making it clear that Respondents consider all individuals who entered without inspection and admission "applicants for admission" subject to mandatory detention under section 1225(b)); *Matter of Q. Li*, 29 I&N Dec. at 69 (holding that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section [1225(b)], and is ineligible for any subsequent release on bond under section [1226(a)]"). The government's reclassification of Petitioner as an "applicant for admission" who was "seeking admission" without statutory basis and without meaningful opportunity to contest that designation deprives him of liberty without due process. Civil detention without an individualized determination of danger or flight risk is unconstitutional.

See Zadvydas, 533 U.S. 678; *Demore*, 538 U.S. 510 (as limited by subsequent authority); U.S. Const. amend. V.

82. Additionally, any constitutionally sufficient bond hearing ordered for the Petitioner means the burden of proof falls on the government to show by clear and convincing evidence that he is a flight risk or danger to society. *See Lopez v. Paulk*, --- F. Supp. 3d ---, No. 7:26-cv-00029, 2026 WL 961948, at *5–*10 (M.D. Ga. Apr. 6, 2026) (requiring the Government to "bear the burden of establishing by clear and convincing evidence that Petitioner is either a danger to the community or a flight risk" at a § 1226(a) bond hearing); (*see also, e.g.*, Ex. 12, *Soto-Medina*, 2026 WL 161002, at *11 (granting habeas petition and ordering that the government would have the burden to demonstrate dangerousness or flight risk by clear and convincing evidence and must file a status report within six business days of the Court's order)).

83. Accordingly, due process requires Petitioner be released from custody immediately, or that he be afforded an individualized bond hearing under section 1226(a) where the Government must prove, by clear and convincing evidence, that continued detention is warranted.

COUNT THREE

Respondents Violated of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

Unlawful Detention not in Accordance with Law and in Excess of Statutory Authority

84. The allegations in the above paragraphs are realleged and incorporated herein.

85. Here, the IJ's determination that she lacked jurisdiction to hold a bond hearing exceeded the statutory authority Congress conferred, as her conclusion violated sections 1225(b)(2)(A) and 1226(a) as interpreted by the Eleventh Circuit in *Hernandez Alvarez*, 175 F.4th at 1267–70. Her decision resulted in the denial of Petitioner's statutory right to a bond hearing and his Fifth Amendment right to due process, as discussed above.

86. By detaining the Petitioner without any bond hearing, Respondents have violated the APA. *See* 5 U.S.C. § 706(2)(A), (C).

87. Respondents have made no finding that Petitioner is a danger to the community.

88. Respondents have made no finding that Petitioner is a flight risk.

89. The IJ's refusal to conduct a bond hearing based on *Matter of Q. Li* constitutes final agency action that is contrary to statutory text, contrary to binding precedent, and irrational. Applying *Matter of Q. Li* to Petitioner's case was not in

accordance with law, in excess of statutory authority, and short of statutory right. *Id.* The resulting deprivation of bond eligibility is therefore unlawful under the APA.

90. Thus, the Petitioner is entitled to immediate release or a prompt bond hearing with extra safeguards.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Declare that the Petitioner's detention violates the INA;
3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
4. Declare that the Petitioner's detention violates the APA;
5. Issue a Writ of Habeas Corpus ordering Petitioner immediately released, or in the alternative, ordering Respondents to conduct a constitutionally sufficient bond hearing within seven (7) days, with the following safeguards in place:
    a. Declare that Respondents bear the burden to show flight risk or danger to society by clear and convincing evidence; and
    b. Order Respondents to give a status report to this Court within three (3) days showing compliance with this Court's Opinion.
6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
7. Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Brittany S. Pierce

Attorney Bar Number: 613909
Attorney for Julio Arturo Berduo Lopez,
Lively Law Firm
2221 Edge Lake Drive, Suite 175
Charlotte, NC 28217
Telephone: (980)-202-7991
E-Mail: brittany@livelylawfirm.com

Counsel for Petitioner

Dated: July 7, 2026

PETITIONER'S EXHIBITS

EXHIBIT 1 - ***Romero-Nolasco v. McDonald*, No. 25-cv-12492-MJJ, ECF No. 22 (D. Mass. Jan. 14, 2025)**

EXHIBIT 2 - Form I-213

EXHIBIT 3 - Notice of Custody Determination

EXHIBIT 4 - Notice to Appear

EXHIBIT 5 - I-589 Application

EXHIBIT 6 - DHS Notice of Filing

EXHIBIT 7 - BIA Filing Receipt for Appeal

EXHIBIT 8 - Motion for Bond Hearing

EXHIBIT 9 - Bond Order

EXHIBIT 10 - ICE Memo "Interim Guidance Regarding Detention Authority for Applicants for Admission," dated July 8, 2025

EXHIBIT 11 - ***Maldonado Bautista v. EOIR*, No. 26-1044 (9th Cir. Mar. 31, 2026)**

EXHIBIT 12 - ***Soto-Medina v. Lynch et al.*, No. 1:25-cv-1704, 2026 WL 161002 (W.D. Mich. Jan. 21, 2026)**

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Julio Arturo Berduo Lopez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 7th day of July, 2026.

/s/Brittany S. Pierce

Brittany S. Pierce